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Political economy, interest groups, legal institutions, and the repeal of the Bubble Act in 1825[1]

By RON HARRIS

For 105 years, beginning with the enactment of the Bubble Act in 1720, the free and spontaneous formation of joint-stock companies in England was prohibited. The only legal course of action opened to entrepreneurs seeking company formation was to first obtain specific state authorization, in the form of a charter or an act. During this period the English economy experienced unprecedented growth and substantial structural changes, which many still refer to as the industrial revolution. This legal framework of business organization seems to have formed a constraint upon the economy, inducing entrepreneurs to organize, willingly or reluctantly, in family firms, closed partnerships, or unincorporated companies of doubtful legality. The functional limitations experienced by these alternative forms of organization, which could not offer all the legal attributes of full incorporation, became more acute as the organizations grew larger, both in labour and in capital, as risks increased, and as managerial responsibilities became more complex. And then in the early summer of 1825, long after the canal era and the initial diffusion of new technologies into the iron and cotton industries, yet before the railway boom, the act was unexpectedly repealed.

The repeal was a turning point in the attitude of Parliament to joint-stock companies, and an important first step in a process that led, albeit not without twists, to the enactment of the General Incorporation Act of 1844 and the Limited Liability Acts of 1855 and 1856, and eventually to the rise of big business, managerial capitalism, and corporate economy after the turn of the century. Yet the 1825 repeal has not received much attention from historians. The history of joint-stock companies during the industrial revolution has not been dealt with in book length studies since the 1930s. Hunt's seminal work treated the repeal briefly,[2] through the aged Diceyan paradigm, as part of a wider movement in the 1820s towards free trade or *laissez-faire*.[3] The repeal of the Bubble Act is a

[1] I thank David Cannadine, Alon Kadish, Avner Offer, Ariel Porat, and Omri Yadlin for commenting on drafts of this article, and Michael Edelstein, Eben Moglen, and participants in the Economic History Workshop at the Hebrew University for suggestions at earlier stages.

[2] Hunt, *Business corporation in England*, pp. 40-1. The classic works on the earlier development of the joint-stock company are Scott, *Constitution and finance* and DuBois, *English business company*.

[3] Dicey, *Law and public opinion*. Dicey himself did not choose the repeal of the Bubble Act as one of his examples, yet he signalled 1825 as the beginning of the period of 'Benthamism or Individualism'. Dicey's thesis was demolished by later historians, but the paradigm of *laissez-faire* versus state intervention for examining nineteenth-century England was a dominant one at least

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neglected issue, compared with other pieces of legislation with comparable contemporary or long-term implications (such as the combination acts, the factory acts, and legislation on the poor law and the corn laws), which were passed, repealed, or even just considered around the same period.[4] Though the issue of incorporation and the Bubble Act was high on the public agenda, and consumed more parliamentary time than any other issue in the 1825 session, it is barely mentioned in general surveys of the period. Neither has it been the subject of monographs, as have other aspects of the dramatic events of 1825, such as the South American loans and the stock market boom which predated the repeal, and the banking crisis and reorganization that followed it.[5]

Was the repeal an outgrowth of classical political economy or of the new liberal Tory economic policy, which supposedly favoured the abolition of intervention by the state in the market? If this was the dominant approach, why settle for a repeal in 1825 instead of going one step further and passing positive legislation to secure free incorporation, rather than delaying until 1844? Was the repeal the achievement of industrial and other entrepreneurial interest groups seeking the fortunes that could be made by large-scale projects, company incorporation, and share flotation? If this was the case, why could not these groups have lobbied for the legislation they so desperately needed in earlier decades? On the other hand, how could they defeat the City's leading merchants and well-established financiers whose vested privileges were endangered by the repeal? Was the repeal the result of outmoded legal institutions and conceptions yielding to the new economic reality? If so, why did not the judges give way; why after the repeal did they insist on blocking the formation of new companies on their home ground of the common law? These questions are to a large degree unresolved in the existing literature.

This article argues that the repeal of the Bubble Act not only ushers in a crucial period in the development of the British capital markets and of the legal framework of business organization, but is also illuminating for those interested in the more general economic, political, legal, and even social aspects of the era. It argues, further, that neither the Diceyan paradigm nor a more elaborate public benefit paradigm can alone satisfactorily explain the repeal. Only by integrating the working of interest groups and of judicial culture and institutions can a more viable explanation be provided for the repeal of the Bubble Act and for the wider context in which it took place.

Following a short description of the economic and legal background, part II presents the debates held in parliament to the end of March

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until the 1970s. For a survey of the historiographical debate on the notion of a *laissez-faire* era and the usefulness of the paradigm itself in the heyday of the debate, see Taylor, *Laissez-faire and state intervention*, and the references therein to earlier works.

[4] For a recent synthesis of the role of the state in the economy, with references to studies on these pieces of legislation, see Daunton, *Progress and poverty*, pp. 477-559; O'Brien, 'Central government and the economy'.

[5] Gordon, *Economic doctrine*, pp. 39-51; Brock, *Lord Liverpool*, pp. 200-13; Hilton, *Corn, cash, commerce*, pp. 202-31; Mirowski, *Birth of the business cycle*, pp. 256-8; Kindleberger, *Manias, panics and crashes*, pp. 114, 184; Clapham, *Bank of England*, 2; Dawson, *Latin American debt crisis*.

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1825, regarding joint-stock companies and the Bubble Act, from a public benefit perspective. The narrative is a discourse between three ideological camps: paternalistic conservatives, supporters of minimum intervention, and free incorporation reformers. In part III, a different narrative is constructed for the same period, organized around a private-interest conception of economic legislation, which is inspired by developments in the theory of regulation.[6] This second story tells of the competition between rival rent-seeking groups of company promoters as well as other vested interest groups. Part IV covers the time from late March to the eventual repeal of the Bubble Act in June 1825. It argues that though a public interest perspective should not be dismissed altogether, a private interest perspective has better explanatory power for this period. In the concluding section, it is suggested that even this perspective, based on the prevailing economic theory of regulation, cannot fully account for the final outcome. Though this theory has been developed considerably since the 1970s, to compensate for some early shortcomings, it does not yet adequately deal with the complex interaction between the legal culture and economic regulation.[7] In the present case, changing interpretations of statutory regulation, reformulation of the common law, the competition between judicial institutions, the multi-functional status of the Lord Chancellor, and a conservative legal ethos, none of which is sufficiently accounted for by the economic theory, played a major role in the final outcome.[8]

I

In the early 1820s about 150 joint-stock companies existed in England, mostly in the infrastructure and the insurance sectors. Many of them were not incorporated by the state, either by royal charter or by special act of parliament. The Bubble Act, passed at the height of the South

[6] In the period 1965-75, the public choice methodological approach was applied to positive theoretical study of the passage of economic regulations. As part of this tendency, pioneering works dealt with the internal logic of interest group action, the importance of rent-seeking by entrepreneurs, and the examination of regulation in a market setting, in which the legislature supplies regulation upon demand from competing, and paying, private groups. These new private interest theories criticized as naive the traditional conceptions, according to which regulation was placed on the economy exogenously, or was motivated by public benefit economic goals of politicians. The seminal works in these fields are Olson, *Logic of collective action*; Krueger, 'Political economy of rent-seeking society', p. 291; Stigler, 'Economic regulation', p. 3.

[7] More sophisticated economic models which have evolved since the mid-1970s recognized, among other things, that interest groups interact not only internally and with the legislature but also with each other, that the legislature is not a passive player which supplies regulation upon demand, that executive agencies have an important role in framing and enforcing regulation, and that avoidance of regulation, the threat of regulation, and deregulation should also be dealt with in the same theoretical framework. See Peltzman, 'Theory of regulation', p. 211; Posner, 'Theories of economic regulation', p. 335; Becker, 'Theory of competition', p. 371; McChesney, 'Rent extraction and rent creation', p. 101; Aranson, 'Theories of economic regulation', p. 247; Ogus, *Regulation, legal form and economic theory*, pp. 55-75.

[8] A relatively new school in legal history has attempted to study this complex interaction between law and economy, from an approach which is termed by some as critical legal studies and by others as dialectical: see Gordon, 'Critical legal history', p. 57; Sugarman and Rubin, 'Law and material society'; Kostal, *Law and English railway capitalism*.

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Sea Bubble of 1720, presumed to prohibit the formation of unincorporated joint-stock companies with transferable shares.[9] For over 80 years this act seemed to be a dead letter; however, around 1810, a number of judgements revived and widely interpreted it, when they declared several associations to be criminally violating the act. These court decisions placed in doubt the legality of the unincorporated company as a legitimate form of business organization.

Between 1820 and 1822, according to most interpretations, Lord Liverpool's government was veering from High Tory to Liberal Tory.[10] New men were appointed to prominent positions, including Robinson to the Exchequer, Peel to the Home Office, and Huskisson to the Board of Trade. Ministers in those years showed a great deal of interest in questions of food supply, tariffs, public debt, and monetary policy, using the principles of political economy as a doctrinal guide or a rhetorical tool. But little or no attention was paid to the issues of joint-stock incorporation and the share market. In the next few years, the government was compelled, for the first time since the South Sea Bubble of 1720, to confront these issues in earnest.

The initial signs of a new boom in the London markets came in 1822 with the first Latin American loans. The newly independent states in that region sought financial resources, at a time when European financiers were seeking new investment outlets as they recovered from the Napoleonic wars. The meeting of the two led to the development of an active loan market centred in London. The first South American loans, in the amount of £3.4 million were floated in London in 1822, but the real rush came in 1824 with £11.4 million and in 1825, with an additional increase of almost £6 million.[11] The Latin American loans were well received in London in 1824 and early 1825. Interest rates were high and interest paid promptly. Loans were over-subscribed and bond prices rose.

Optimism and enthusiasm soon spread from the bond market to the share market. In the summer of 1824, the first South American mining companies were promoted in the City by a reinforcement of the generations-old belief in mythical indigenous treasures and unexploited minerals presumably hidden in the jungles and mountains of South and Central America, awaiting assertive English adventurers, after more than four centuries of latent Spanish conquest. This notion was music to the ears of the speculative among the English investors. The number of new projected companies rose from day to day. By January 1825, six South American mining companies were quoted regularly on the Stock Exchange lists; by March, their number was 17 and by August, 34.[12] The boom

[9] 6 Geo. I cap. 18 (1720).

[10] For presentation and reformulation of the historiographical debate on this issue see Hilton, 'Political arts of Lord Liverpool', p. 147.

[11] Dawson, *Latin American debt crisis*, app., 'Table of loans floated in London'. Altogether, governmental loans to the amount of more than £30 million were contracted in Europe's financial centres in the years 1824-5, most of which, about £25 million, were issued in London's foreign bond market. Of these, more than £17 million were loans to the newly independent Latin American states.

[12] Thomas, *Crisis of 1825*, app., p. 32. The figures are based on Wetenhal's *Course of the Exchange*.

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spread to domestic mining companies as well, to a total of 74 flotations of new mining companies in 1824-5.[13] New companies of all kinds soon appeared. These included gas, insurance, canal, railway, steam, and investment companies and many others, covering every business imaginable. These projected companies numbered 624 altogether, an astonishing total, even when measured against the optimistic days of the South Sea bubble, and certainly impressive when compared with the total of only 156 companies in existence before 1824.[14] The total nominal capital of these companies (£372 million) was even more amazing, by contemporary standards.[15]

Interest in the Bubble Act grew in the wake of this speculative boom of 1824-5. Once more the story of the South Sea Bubble was rewritten and circulated, and justification for its enactment was upheld by its champions.[16] But its opponents presented a conflicting version of the act's original intent:

> Ask 99 persons out of a 100 what the Bubble Act is. They will think that it was a statute somewhat strict to be sure, not altogether suited to the spirit of these times, but nevertheless, a statute passed by wise statesmen immediately *after* the bursting of the infamous South Sea bubble and its less glittering companions, and tending to prevent any such ruin from again recurring. Never let them forget that it was a statute smuggled through the Houses by the promoters and projectors of the South Sea scheme itself.[17]

Common wisdom viewed the Bubble Act as just as essential and relevant in 1825 as it had been 105 years earlier, while the revisionist version portrayed it as an anachronistic and corrupt piece of legislation. History once again served as a tool in a contemporary political and legal debate.

Just as the 1807-8 boom had led to numerous disputes between promoters and investors, intensive court litigation, and some leading judgements on the interpretation of the Bubble Act, so did the boom of 1824-5. Between the close of the session of Parliament in June 1824 and the new session opening with the King's speech on 3 February 1825, some 160 schemes for joint-stock companies were published.[18] Next day, the Court of King's Bench declared the Equitable Loan Bank Company illegal within the operation of the Bubble Act, in the case of *Joseph* v.

[13] English, *Joint stock companies*. Not all of these actually reached maturity, thus their share prices were never quoted.

[14] Ibid., pp. 30-1.

[15] Compared with total capital of the joint-stock companies in existence prior to 1824 which came to £47,936,486 (not including the three monied companies): ibid., p. 31.

[16] Anon., *South Sea Bubble*.

[17] Anon. *Lawyers and legislators*, p. 89. The misconception as to the reason for the enactment of the Bubble Act which developed in the later part of the eighteenth century, and dominated the scene in 1825, survived until the late twentieth century: see Harris, 'Bubble Act', p. 610.

[18] For a list of the schemes including dates and capital, see app. 4 of the *Report of the Select Committee on Joint Stock Companies* (P.P. 1844, VII). The lists include, in addition to the 160 companies mentioned above, 83 companies promoted after January 1825 and 100 companies that were advertised but did not progress any further. See also Anon., *Remarks on joint stock companies*, p. 28, which lists a total of 153 promotions by the end of January and 68 in January alone.

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Pebrer.[19] In 1824, the Equitable had petitioned Parliament for incorporation. The matter was debated for many months, and the company did not await incorporation before opening share subscription books.[20] The defendant argued that a contract for the purchase of shares in the company from the plaintiff, a stockbroker, was void because the company was an illegal association. The court based its decision on the evidence that though the company presumed to act as a corporate body, it had a mischievous effect (it charged a usurious 8 per cent interest) and its shares were transferable.[21] The King's Bench decision to declare the Equitable illegal had an immediate effect in the City.

The opening of the session and the fresh judgement urged scores of promoters, solicitors, and MPs to submit bills to Parliament and rush them through the readings. This was an unprecedented development. In previous booms the promoters and speculators did not bother to apply for parliamentary incorporation. But this time the fierce competition for investors' attention and the growing shadow of the Bubble Act drove many of the promoters from the City to Westminster. During the five-month 1825 session, no less than 438 requests were made to parliament to form new companies.[22]

This stream of bills called the attention of the house, on 22 March, at the peak of the rush, to the lack of accommodation for private committees. The atmosphere in the house during these late winter weeks was frenzied,[23] causing even some of the back-bench country gentlemen to show interest in the joint-stock legislation. The squeezing and shoving in Parliament did not prevent 286 of the bills from passing successfully.

II

Parliament did not place the issue of joint-stock companies on its agenda voluntarily. During debates on specific incorporation bills, some members took the opportunity to rise and speak of general policy concerns. A few of these speeches were delivered in the later part of the 1824 session, but the more significant ones date from the first two months of the 1825

[19] *Joseph* v. *Pebrer*, 3 B. & C. 639 (1825).

[20] See *Hansard* (Commons), new ser., XI, 1824, p. 1339; XII, 1825, pp. 1194, 1350; XIII, 1825, pp. 164, 899, 1061, 1163, 1349. The bill was defeated on its third reading in June 1825 after having been debated for over a year.

[21] The judges distinguished this case from earlier cases, *Webb* and *Pratt*, held in King's Bench in 1811-2, in which the relevant companies were not declared illegal. In these cases, unlike the Equitable case, the object of the society was not found to be in grievance to the public, and restrictions had been placed on the transferability of shares. For a discussion of court decisions regarding the interpretation of the Bubble Act, before 1825, see Harris, *Industrialization without free incorporation*, pp. 261-9.

[22] Thomas, 'Crisis of 1825', pp. 211-5. According to Hunt, *Development of the business corporation*, p. 52, a total of 297 petitions were made in 1825 and 191 additional ones in 1826. To this figure we should add the bills of 1824, to give a total of more than 500 bills during the entire boom.

[23] Home Secretary Peel and the speaker promised that if the press of private business continued they would look for a solution for the next session, and meanwhile the private committees were allowed into the house itself: see *Hansard*, XII, 1825, pp. 1032-4.

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session. Thus, by late March 1825, debates on specific companies provided a wide range of opinions on the status of the joint-stock company.

The first to rise, immediately after the King's speech, was Lord Chancellor Eldon, who promised to initiate a bill which would take effect from the first day of the session, for regulating the joint-stock company. He opposed the selling of shares of any company by promoters before it was duly incorporated, because this was illegal and exploited innocent share buyers.[24] Eldon, the conservative jurist, opposed parliamentary incorporation, not to say free incorporation, and aimed at returning to a royal chartering system, which had declined over the past century. He favoured strict enforcement of either the Bubble Act, or preferably a more prohibitive statute; he opposed unincorporated companies and rejected any compromise which would give them the privileges of corporate bodies.[25] Eldon believed in the old social order, by which he, a coal factor's son, had done well; and in the professional ethos which stressed formalistic thinking, the rule of law, past precedents, and stability.

Other High Tories, including Westmoreland, Lauderdale, and Redesdale shared Eldon's belief that non-tangible holdings, speculations, and paper transactions hindered real trade and individual traders, did not contribute to the wealth of the nation, and endangered public finance in war time.[26] The 'fiscal-military' apparatus was based on the market for state securities.[27] The High Tories sensed that the emerging share market was competing successfully for investors' money, and by the next war the government might not be able to mobilize private resources and consequently troops, as it had in the past. These aristocrats were not concerned with Eldon's legal niceties but they reached the same operative conclusion: that the rise of the joint-stock company should be checked.[28]

On this simplified spectrum of opinions, the High Tories are located at one extreme, and a group of bankers and businessmen, including Hudson Gurney, the Whig banker from Norwich, Mathias Attwood, the liberal Tory banker from Birmingham, and Alexander Baring, the international City financier, on the other. All three were prolific speakers on economic issues and usually rose above their private points of view, at least when the issues did not touch on banking policy. They all realized that the joint-stock form of business organization was there to stay and would expand within the economy, and judged this as a positive development since the joint-stock company made possible the development of

[24] *Hansard*, XII, 1825, p. 31.

[25] *Hansard*, XI, 1824, pp. 791-2; XII, 1825, pp. 31, 127-8.

[26] For the High Tories in government, and particularly in the Lords, see Brock, *Lord Liverpool*, pp. 231-2.

[27] Dickson, *Financial revolution in England*; Mathias and O'Brien, 'Taxation in Great Britain and France', p. 601; Brewer, *Sinews of power*.

[28] In May 1824, the Earl of Lauderdale suggested a standing order in the Lords to prohibit a second reading of incorporation bills before four-fifths of the company's capital had been paid up. On 2 June, the standing orders were agreed to (reducing the capital requirement from four-fifths to three-quarters). The standing orders diverted the initiation of incorporation bills from the Lords almost exclusively to the Commons: *Hansard*, XI, 1824, pp. 856-7, 1076-7, 1340; XII, 1825, p. 1194; XIII, 1825, p. 1135.

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capital-intensive projects: canals, docks, and other infrastructures that individuals could not and the government should not administer.[29] They also shared the perception that the law of business organizations was an anachronism, its common-law component was shaped 'in an entirely different state of society, when there was little or no commerce', and its legislative component—the Bubble Act—was passed 'in a moment of national phrenzy—assuredly, when there was no wisdom'.[30]

Attwood attacked those lawyers (the Lord Chancellor and his officers) who tried to de-legitimize and prosecute the unincorporated joint-stock companies:

> Those individuals would have better consulted their own character, and have rendered better service to the country, if, instead of attempting to influence the conduct of the mercantile operations, of which they knew nothing, they had applied themselves to remedy the absurd and disgraceful state of the law itself, which fell within their own province.[31]

Hudson Gurney called for:

> one general law for the formation and regulation of all joint stock companies—whether the introduction of a law of registration of partnerships, with limited responsibility, as in France, and many other states of the continent, he was not competent to say; but some general act ought to be brought in; and by the government. He hoped the president of the Board of Trade, would take the matter into his own hands.[32]

Contrary to Eldon's conception of the law as eternal and autonomous, these bankers perceived it as outmoded, not instrumental, and in urgent need of reform.

Between these two opposing poles were the Liberal Tories in Cabinet: Huskisson, who, as President of the Board of Trade, expressed himself often in the Commons on the issue he viewed as his domain, Lord Liverpool who supported him from time to time in the Lords, and possibly Peel, Canning, and Robinson.

As he was called upon daily to support or condemn incorporation bills, Huskisson found it necessary to define his general position:

> It would surpass any powers which he possessed, or any leisure he could bestow upon it, to probe to the bottom the merits of the various speculations, and to be able to decide which was likely to be a beneficial undertaking, and which a bubble.[33]

He viewed the ongoing speculation as dangerous and was tired of debating the hundreds of private bills. He shared Eldon's opinion that all the

[29] Attwood glorified them: 'Millions of capital, hundreds, perhaps, of millions, were employed in this country by those associations, honorably, profitably, usefully to the country; and were totally without the pale or protection of the law. The parties were a law for themselves, their character was their law': *Hansard*, XII, 1825, p. 1068.

[30] *Hansard*, XII, 1825, pp. 718, 1063-4 (Baring); pp. 1060, 1283-4 (Gurney); pp. 1066-72 (Attwood).

[31] *Hansard*, XII, 1825, p. 1068.

[32] *Hansard*, XII, 1825, p. 1060.

[33] *Hansard*, XII, 1825, pp. 717-9.

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petitioners should seek a charter rather than an act and should canvass the law officers rather than Parliament.[34] He was not willing to grant parliamentary limited liability to any of the new promotions, but saw no reason to reject their applications to sue and be sued using a common name. Unlike the ultra-conservative Eldon, Huskisson did not think that rigorous legislation or stricter enforcement of existing legislation was needed. He said: 'You can form yourselves into what companies you please', and meant, as long as you do not bother Parliament.[35] Huskisson believed that most of the new speculations 'would, in the end, vanish into thin air, and leave those who entertained them nothing but regret and disappointment'. Yet he did not think Parliament should interfere.[36]

On 25 March, while debating the Equitable Loan Company Bill in the House of Lords, Lord Liverpool decided to break his long silence on this matter and state his opinion in the face of a growing storm:

> In a country like this, where extensive commercial interests were constantly at work, a great degree of speculation was unavoidable, and if kept within certain limits, this spirit of speculation was attended with much advantage to the country. [Furthermore], he would be one of the last men ever to interfere, by legislative provision, ... to prevent men from spending their own money as they pleased.[37]

Indeed, a *laissez-faire* speech was made by the Tory Prime Minister, who was in accord with Huskisson in this matter. However, Liverpool did not call for the abolition of the existing interfering legislation, namely the Bubble Act.

In late March the Bubble Act seemed to be well secured, if examined from the perspective of the political and ideological discourse. Only by turning now to the more covert private-interests discourse can we see that its days were numbered.

III

As we turn from the public-benefit to the private-benefit approach to regulation, a parallel narrative surfaces. This undercurrent, occasionally ignored by historians, was central in the contemporary context, and is essential for understanding the repeal of the Bubble Act. This is the story of the bitter clash involving self-interested MPs and interest groups outside Parliament. Some of the parties to this clash were in urgent need of public recognition and incorporation, while others were trying to block competition from ambitious newcomers. It was a typical story of rent-

[34] Eldon's reasoning was legal: he explained that if a chartered company acted improperly its charter could be withdrawn immediately, whereas a company formed by an act could be deprived of its incorporation only by another repealing act: *Hansard*, XII, 1825, p. 792. Huskisson's opinion was more practical. Parliament had neither the tools nor the time to distinguish between 'good' and 'bad' schemes.

[35] *Hansard*, XI, 1824, p. 530.

[36] *Hansard*, XII, 1825, p. 1076.

[37] *Hansard*, XII, 1825, p. 1195.

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seeking entrepreneurs who were driven eventually to generate a regulatory change, in an attempt to protect their interests.

We shall first observe the working of these interests under the existing regulatory regime. Of the numerous bills debated in this period, three examples will be considered: one, a new initiative for overseas investment, part of the thriving Latin American mining business; the second, a conflict between a new enterprise and vested interests in the infrastructure sector, in this case a new London dock; and the third, an attempt by new technology to offer an alternative to more traditional means—railway versus canal. Using these examples, it will be argued that the changing legal interpretation and enforcement of the Bubble Act drove these interest groups to initiate an alternative to the existing regime.

The Pasco-Peruvian Mining Company Bill, a typical Latin American mining bill, was presented and supported in the Commons by a group of aggressive, private-interest-seeking company promoters. These included Pascoe Grenfell, a merchant and mine owner operating in Cuba and Colombia, and the director of several of the newly promoted companies (it was rumoured in the City that the company was named 'Pasco' after him); Thomas Wilson, a West Indian merchant, director of several companies, and a prominent representative of shipping and commercial interests of the City; Alderman George Bridges of the City of London; and Thomas Fowell Buxton, abolitionist, brewery manager, and director of other mining and insurance companies.

John Hobhouse, the Westminster radical, awaited the reading of the Pasco-Peruvian Mining Company bill, promising the house on several occasions to demonstrate that the only aim of the company was 'to work mines on the Stock Exchange'.[38] When the time came, he presented a well-researched account of the futility of promoting the company and of mining in the Peruvian mountains. The proposed company was manifestly a bubble whose only aim was to enrich its original projectors, no more than 25 in number, at the expense of the credulous public. Other opponents of the bill hinted that certain members of the house were among the prime shareholders of the company, and warned that following the foreseen crash, these members would be accused 'of having leagued together to promote their private interests'.[39]

The case of the St Catherine's Dock bill (concerning the modern St Katharine's Dock) illustrates the clash between two interest groups in London itself. The bill called for the incorporation of a company which was to erect a new dock between the Tower and London Docks. The active supporters of the bill represented the immediate promoters of the company, and merchant and shipping interests, both in London and in the out-ports. They argued in Parliament that the existing docks were

[38] See Hobhouse's speeches on 28 February, 9 March, and 16 March: *Hansard*, XII, 1825, pp. 717-8, 965, 1048-56 respectively.

[39] Mr. Lockhart, *Hansard*, XII, 1825, p. 1062; Mr. Colcraft, ibid., p. 1065. It is not clear whether in the end the promoters who faced opposition in the committee decided to act without incorporation, or gave up the scheme as a result of problems in the mines themselves or the collapse of the stock exchange: see *H. of C. Journals*, LXXX, p. 210.

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too crowded; that the Port of London would lose some of its trade to other ports; that competition would lower prices; and that the new dock, unlike most of the existing ones, entailed no special privileges of exclusiveness. Their rivals rejected the ideological, free-trade rhetoric for the bill. One of them argued that 'this piece of business was supported by eighteen gentlemen and a half' who put their money in the company. 'Where this money came from he could not tell; he hoped not from members of that House.'[40] Another said, 'Never was a bill brought into the House in so barefaced a manner . . .. Persons holding shares to the amount of £50,000 had voted for it.'[41]

The supporters of the bill were thus accused of not considering public or even sectoral benefit, but rather of being motivated by personal greed. Their support for the bill was presumably motivated by the desire for straightforward profits on share holding, as well as the secondary advantage of lower fees and improved services, as major clients of the Port of London. However, the bill's foes were not themselves disinterested; they represented the shareholders of the other docks, especially the neighbouring London and West India Docks, the owners of warehouses in those docks, and tenants in the vicinity of the new dock.[42] The concept of the City as a relatively coherent interest group in its dealing in Parliament does not hold in the present case, as aldermen and other City businessmen were bitterly divided over the St Catherine's bill.[43]

The third example is the debate over the new Liverpool and Manchester railway line, second only to the not yet completed Stockton-Darlington line, promoted by manufacturers, bankers, and merchants in Lancashire, and supported by others in Ireland and other parts of the kingdom. The new company was well lobbied in Parliament by General Gascoyne, who sat for Liverpool, and William Peel, the brother of Home Secretary Robert, and son of the Lancashire textile industry magnate.

It was opposed by two major interest groups: the shareholders of the three existing canals between Manchester and Liverpool; and landowners in that area, who expressed concern over the company's land expropriation powers; and the decreased value of adjacent land. These interest groups provided experts' opinions on the services provided by the canals, their ability to accommodate all present and future transport, and the inefficiency of railways. An opposing MP referred to an expert on canal and railway matters who concluded that 'a more extraordinary delusion never was known, than that of supposing that a rail-road was superior to a canal'. The anti-railway camp enlisted the Corporation of Liverpool,

[40] Admiral Joseph Yorke, *Hansard*, XI, 1824, p. 97.

[41] Charles Calvert, *Hansard*, XII, 1825, p. 612.

[42] Three of the speakers against the bill, William Manning, John Smith, and William Heygate were current or past directors of the rival West India Dock Company. Others included the former lord mayor of the City of London and one of its aldermen, a director of the Bank of England.

[43] Despite the heavy opposition, and with the help of the Chancellor of the Exchequer's 'no objection in principle', the bill made its way, receiving 74 votes to 55 in the first vote and 118 to 30 in a second vote. It passed after two sessions of debates. For the debates, see *Hansard*, XI, 1824, pp. 95-101 and XII, 1825, pp. 612-4. For petitions, see *H. of C. Journals*: in favour of the bill, pp. 17, 22, 25, 36, 43, 114, 156; against the bill, pp. 106, 177, 197, 208.

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the Archbishop of York, the executors of the Bridgewater estate, and Edward Stanley, heir to the Earl of Derby.[44] The debate on the Liverpool and Manchester bill did not focus on the principle of free trade, nor its application to natural monopolies such as canals, on the value of the new technology, or on the proper balance between private property rights and public needs. It was, rather, a straightforward confrontation between long established vested interests and newcomers.

These are only three of the numerous examples for rent-seeking activities in Parliament in 1825. Members often accused each other during debates on bills of incorporation of having private interests in specific companies and of voting accordingly. Attention was called in the Commons to an example in which 16 members of a committee held shares of up to £30,000 in a joint-stock company whose incorporation bill was pending before that same committee.[45] One member referred to the custom of 'offering shares to members—advertising them by preference as directors, to entrap the unwary; and as directors, giving them shares to sell at a profit in the Bubble-market'.[46] Another mentioned that 'it was well known that in most of the speculations now afloat in the city, some thousand shares were reserved for the use of members of Parliament'.[47] A list was even circulated in the City, with the names of 28 MPs who held directors' seats in four or more companies. Matters in Parliament deteriorated to such a level in 1824-5 that Henry Brougham made it a rule not to vote on private bills, and Joseph Hume brought in a motion for a standing order which would restrict voting on a private bill by members who had an interest in that bill.[48]

It is evident from the three examples presented above, as from many other cases, that a vigorous web of private interests was a major factor in shaping the stand of most active MPs for or against specific bills. Here a distinction should be made between active members and the remainder. Most members of the Commons in this period were still from the landed classes, but they did not bother to participate in committee

[44] This strong opposition buried the bill in the 1825 session. Only the following year, with the support of Huskisson (who could not conceive that this specific speech would have mortal consequences for him five years later at the public opening of the line) and after a compromise with the canal proprietors, did it pass the third reading. For the debates, see *Hansard*, XII, 1825, pp. 845-54; XV, 1826, pp. 89-94. For the petitions, see *H. of C. Journal*, 80 (1825), pp. 121, 130, 155, 182, 190, 197, 224, 236. For the compromise with the canal interest, from the perspective of the Sutherland family, see Richards, *Leviathan of wealth*, pp. 56-72.

[45] Joseph Hume in *Hansard*, XI, 1824, p. 913.

[46] Hudson Gurney in *Hansard*, XII, 1825, p. 982.

[47] Alexander Robertson in *Hansard*, XII, 1825, p. 986.

[48] Company promoters, such as Grenfell, Ellice, and Colcraft, argued that opponents of bills are also motivated by interests, that members are elected to represent interests, that only interested parties are actually involved in these proceedings, and that just as members are trusted on public matters they should be trusted on private matters. Hume's motion was withdrawn in May 1824 and when presented again in the next session, was defeated in March 1825: *Hansard*, XI, 1824, pp. 910-8; XII, 1825, pp. 635-41, 973-86. See also Mundell, *Influence of interest and prejudice*, for a detailed deliberation of the defects in parliamentary proceedings, and the ways in which these are exploited by interested MPs and result in improper legislation.

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shoving or even in house votes on specific company bills.[49] They were not really aware of the general implications of the Bubble Act. From a gentry perspective the controversy over the act, unlike those on the corn laws, parliamentary reform and other contemporary points of debate, was more of an internal affair of the middle classes than an inter-class conflict. To sum up, ideological and political arguments were in many cases used by a relatively small group of active members as a rhetorical tool, intended to conceal private interests and claim public benefit. The consequence was that for most of 1824 and early 1825, a considerable number of MPs were either manipulating for, or being manipulated by, powerful interest groups.[50]

IV

Until late March 1825, the legislative framework of business organization seemed to be as stable as it had been in the century before the boom. Liberal Tory ministers with economic portfolios declared non-intervention as their policy in encountering the boom, and that seemed reasonable considering the bull market and confident public opinion. High Tories relied on Eldon, who had not yet drafted his promised bill. The Lord Chancellor, in his judicial capacity, had a pending case, *Kinder* v. *Taylor*, and used this as an excuse to avoid any legislative initiative. He thought it would be improper for him to declare his position further in the Lords on the state of the law, a matter about which he was hearing arguments in the Court of Chancery.[51]

On 29 March the excuse for inaction expired as Eldon delivered his judgement in Chancery in *Kinder* v. *Taylor*, in the matter of the Real del Monte Company, a typical product of the boom years. It aspired to incorporation but began its business, mining in Mexico, as an unincorporated company. At one point, the company resolved to divest itself of the rights to the Bolanos mine in favour of the defendant who was one of its promoters. The plaintiff, a shareholder, argued that this resolution withheld from him his fair share in the company's assets. Both parties argued in Chancery about the interpretation of the deed of settlement, to determine whether the company's resolution was valid.[52]

Lord Eldon astonished counsel by turning his attention from the content and interpretation of the deed to the question of the legality of the company and 'the right of any persons claiming as proprietors in such a company, to have the aid of a court of justice'. 'If the Bank of England, the East India Company, or the South Sea Company, wanted

[49] Only about 150 of the MPs had commercial interests (in 1820), while a majority had landed interests, and the second largest group was that of professionals. Some two-thirds of the commercial interests were London-based, with large representation of East and West India and Bank interests: see Thorn, *House of Commons*, pp. 278-356; Judd, *Members of Parliament*, pp. 54-77.

[50] It seems that an exception to this can be found mainly in the statements of members of the administration and radical MPs who tended to accentuate public and moral considerations.

[51] *Hansard*, XII, 1825, p. 1196.

[52] *Kinder* v. *Taylor*, *Law Journal Reports*, old ser. 3, Cases in Chancery 68 (1824-5).

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a new charter, they could not do better than copy the deed of regulation of the Real del Monte Company', which in fact was organized according to a conspicuous corporate model.[53] He took the opportunity to criticize the common-law courts for not considering the Bubble Act fully and not determining what constituted acting as a corporate body. His main target was Lord Ellenborough, who as chief justice of the Court of King's Bench had not done so in 1812 in the *Webb* case.[54] Eldon added another statement which undermined any remaining certainty regarding the legality of the unincorporated company:

> Now, the statute supposes, and he himself confidently believed, that to act as a corporation, not being a corporation, was an offense in common law' . . . we have a common law as well as statute law; and that what may not be within the comprehension of the statute, may, nevertheless be within the prohibition of the common law.[55]

In this last blow, Eldon established a second line of defence: even if the Bubble Act were interpreted narrowly by the common-law court, or if the worst came to the worst and it were repealed by Parliament, the common law would be on Eldon's side and would prevent the slide towards uncontrolled speculation and chaos.

On 29 March, the day Eldon announced the law regarding the Bubble Act and the Real Del Monte in Chancery, Peter Moore rose in the Commons to initiate a move 'for defining and ascertaining the law relating to joint-stock companies'.[56] He stated that:

> At present the law in respect to these companies was very obscure and ill-understood; the common law, from its antiquity, being but little applicable to them, and the statute known as the "Bubble Act" being so full of penalties and contradictory enactments, that it was, in fact a dead letter. The necessity of settling a question of so much importance was placed beyond question, by the amount of capital which was daily investing in these speculations [estimated] at upwards of 160 millions.[57]

Moore concluded his speech by asking leave to bring in a bill to repeal the Bubble Act. Who was Moore and why did he favour the repeal of the Bubble Act? Though not a frequent speaker in the house, Moore was a busy man in 1825. He gave his name to many companies as a director, held their shares, which he usually received at no cost, and represented their legislative needs in parliamentary committees. Moore was well situated for providing this service. He was educated by his elder

[53] Ibid., p. 78.

[54] Eldon thought that the interpretation of the Bubble Act was a matter that the Court of Chancery could determine only incidentally, and that it should be settled initially in the courts of law. Ellenborough, unlike Eldon, was not enthusiastic about discussing the effects of the Bubble Act. In *Davies* v. *Hawkins* 3 M. and S. 488 (1815), the question of the legality of the British Ale Brewery, an unincorporated company with transferable shares, was raised by counsel, yet Ellenborough avoided it and decided the case on other grounds.

[55] *Kinder* v. *Taylor* (above, n. 52), p. 81.

[56] In fact Eldon had indicated the leaning of his judgement a few days earlier, during the arguments of counsel. Moore may have been aware of this and prepared his instigation in advance.

[57] *Hansard*, XII, 1825, p. 1279.

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brother, a well-connected Commons clerk, was sent to India to return 14 years later with a reasonable nabob's fortune, and used a considerable part of it to obtain a seat in Parliament. By 1825 he had 23 years' experience of the house, much of it in private bill legislation. He stated openly that 'he had himself the honor to belong to some of these companies, and he pledged himself that there was as much integrity in their views, as in those of the company of the Bank of England'.[58] Moore had even been involved, as the chairman of the British Annuity Company, in a Chancery case in which the legality of the promotion and of his conduct were questioned.[59] He was described by a contemporary observer as 'the director of a considerable number of joint-stock companies, every one of which, we venture to prophecy, must, from their very nature, in the course of 12 months, be dissolved or insolvent, perhaps both'.[60]

Eldon's judicial policy of strong enforcement of the Bubble Act, coupled with his parliamentary policy of objection to further granting of incorporation by acts, and the initiation of a new restrictive act, meant the end of Moore's flourishing promotion business. Though general and free incorporation could fit his needs as companies' promoter, he would suffer as a rent-seeking MP. Thus Moore must have been in a dilemma. He had to settle for second best, the best being the situation in late 1824 and early 1825, namely uncertainty regarding the interpretation and enforcement of the Bubble Act and a manipulative mood in Parliament regarding incorporation bills. Clearly, therefore, the motive behind Moore's repealing bill was self-interest and not public benefit. Moore was not alone in this initiative. He was supported by Pascoe Grenfell, the colourful company promoter and director, and Edward Ellice, a company promoter and shareholder, who happened to run with Moore in the Coventry constituency.[61]

There certainly existed a group of MPs who actively engaged in the promotion and incorporation of joint-stock companies. The group was not homogenous, and its members established collaborations and rivalries as they moved from one initiative to the next, but they had much in common. These interest groups formed part of a new middle-class group, which has not yet received sufficient attention from historians, separate from the well-known long-established privileged class of City merchants and high financiers, and from the relatively new provincial manufacturers. Moore and Grenfell could rely on the support of this group, for which the realization of Eldon's judicial or legislative initiatives meant the end

[58] *Hansard*, XII, 1825, p. 1280.

[59] *Van Sandau* v. *Moore and others*, 1 Russ. 441 (1826).

[60] Anon., *Lawyers and legislators*, p. 78. Indeed within less than a year, Moore's promoted undertakings collapsed, and he had to flee to Dieppe to escape arrest while surrendering much of his fortune to investors who had lost all their money in his companies.

[61] Grenfell moved the incorporation bills of St Catherine's Dock Company and of several Latin American mining companies. On the other hand, he was opposed to the incorporation of the Alliance Marine Insurance Company because of his position as the sub-governor of the Royal Exchange Assurance. Ellice held interests in the Hudson's Bay Company and the North-West Company and was one of the promoters of the West India Company and probably of other companies.

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of a flourishing business. Thus their bill was more than a minor annoyance to the administration.

The Attorney-General, who was rushed into the house to suppress Moore's motion, warned that the Bubble Act dealt with a variety of matters including the incorporation of the two marine insurance companies. The act could not be repealed altogether, certainly not without due deliberation. The startled Peel and Huskisson came to his aid, and advised Moore to withdraw his motion, as being procedurally flawed; they thus avoided referring to its merits.[62] Moore had to comply and promised to correct the procedural flaws and bring in a new bill after the holidays.

As the government took no initiative, Moore did just what he promised and on 29 April he presented a new bill, this time to amend the Bubble Act.[63] Leave was given to bring in the bill, Moore and Grenfell prepared it, and the next day it passed the first reading and was ordered to be printed.[64] Moore's bill went beyond repealing the relevant clauses of the Bubble Act. It aimed also at regulating the initial stage of company promotion and subscription.[65] However, the second reading scheduled for 13 May was deferred and the bill went no further.[66]

Less than three weeks after the stopping of Moore's bill in committee, the Attorney-General, John Copley, pre-empted it and presented his own bill for the repeal of the Bubble Act on 2 June. While Moore's bill ran to 10 pages, Copley's was laconic, consisting of only two operative clauses, one repealing the relevant part of the Bubble Act, the other empowering the king to grant charters without limited liability, at his discretion.[67] Copley's reasoning for repealing the Bubble Act was mainly legal: 'its meaning and effect were altogether unintelligible', it incurred 'the heaviest penalty', and it had become 'a dead letter'. To this he added the consideration of economic policy: many of the unincorporated joint-stock companies that were said to be illegal had been formed for useful and laudable purposes and were advantageous to the public. According to Copley's reasoning, the second clause would make the law officers more willing to grant charters, and would encourage promoters to apply for charters rather than for parliamentary acts of incorporation. Any further legislative measures 'would be at once difficult, unwise and impolitic' according to Copley.[68]

Colonel Davies, who rose after Copley, expressed his fear that the bill might encounter opposition from Lord Eldon who 'had uttered a general exclamation against all joint-stock companies'. Davies concluded that even if Eldon 'had spoken intelligently as a lawyer it was palpable that

[62] *Hansard*, XII, 1825, pp. 1280-5.

[63] In between, a pamphlet was circulated in town with a draft of Moore's proposed bill: Anon., *Copy of the Bubble Act* (1825).

[64] *H. of C. Journal*, LXXX, pp. 358-9.

[65] *Bubble Act Repeal Bill* (Moore's version), (P.P. 1825, I).

[66] *H. of C. Journal*, LXXX, p. 414.

[67] *Bubble Act Repeal Bill* (Attorney-General's version), (P.P. 1825, I).

[68] *Hansard*, XIII, 1825, pp. 1018-20.

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he had spoken with utmost possible ignorance, both as a statesman and a political economist'.[69]

This is one of the many examples of the widening gap between conservative lawyers and men of economic and business outlook in this period of economic transformation. Davies also criticized Eldon for not adhering to Ellenborough's decisions, given in King's Bench in 1808-12, as to the interpretation of the Bubble Act. Eldon's judgement in Chancery in March 1825 created the confusion that instigated the demand to repeal the Bubble Act.

Huskisson, the next to take the stand, disagreed with Davies. He did not doubt the legal reasoning behind Ellenborough's interpretation of the Bubble Act, but thought that this interpretation left the question in a state of vagueness. 'Where persons had embarked large properties in a speculation, ought they not be guaranteed by some secure provision of the law, instead of having their interests left to the eloquence of counsel, or to the discretion of a jury?'[70] Neither Eldon nor Ellenborough was to be condemned, but instead those who drafted the act in 1720. The solution was to repeal the act.

How can we reconcile Copley's initiative for repealing the Bubble Act with Eldon's promise to strengthen the act and further restrict joint-stock companies by new legislation? After all, Copley was, at least in theory, the Lord Chancellor's representative in the Commons. Eldon must have realized that he was on the weaker side, both in Cabinet and in Parliament, at least among the active participants in the debate. It seems that, starting with his judgement in Chancery on 29 March, Eldon revised his tactics. He contemplated taking refuge in his judicial capacity and the safe haven of judge-made law. On four separate occasions, on 27 May, 7 June, 14 June and particularly on 24 June, Eldon revealed his modified approach. If the Bubble Act is repealed, 'he should not much care, for he could tell their lordships that there was hardly anything in that act which was not punishable by the common law'. Eldon induced the judges of the common law courts to interpret the common law as he did and asked Parliament not to consider incorporation bills submitted by illegal associations.[71]

Copley's bill passed the House of Lords on 29 June, five days after Eldon's last statement, without reported objections to its principle, by Eldon or any of the other lords.[72] On 5 July the repeal act received royal assent as 6 Geo. 4 c. 91 (1825).[73] Thus, 105 years after the Bubble Act

[69] Ibid., pp. 1020-1.

[70] *Hansard*, vol. XIII, 1825, p. 1021.

[71] *Hansard*, vol. XIII, 1825, pp. 900-2, 1061-2, 1135, 1349-50. All these addresses were made while the Lords were debating the Equitable Loan Company bill. Eldon was against the consideration of the bill if, as was his opinion, the company had acted illegally as a corporate body before applying to Parliament. He presumed that most incorporation bills were made in similar circumstances and thus should be barred.

[72] *H. of C. Journal*, LXXX, pp. 483, 523, 545, 552, 554, 627. There is no report in *Hansard's Parliamentary Debates* or any other conventional source as to whether there was a debate in the Lords on the repeal bill.

[73] *H. of C. Journal*, LXXX, p. 627.

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was passed at the height of a speculative boom, it was repealed at the height of another.[74]

V

Between the passage of the repeal act, late in the hectic 1825 session, and the opening of the next session, in February 1826, the market lost its momentum and eventually crashed. During the summer, after some negative reports were published, the turnover of the stock exchange fell. In October many of the newly promoted companies were traded for the first time below par, and even prices of East India and Bank of England shares took a downward turn. On 25 October, a run on country banks began, followed in the next few weeks by bank failures, first in the country, and then also in London. On 14 December, the reserves at the Bank of England were even lower than in the 1797 crisis, and it was as close as it had ever been to payment suspension. A complete reversal of its policy which increased credit and note issuing on that same day served as a critical turning point after which gradual stability was attained.

Aftershocks of the crisis were felt well into 1826. Altogether, 80 country banks went bankrupt, most by January 1826, as did a large number of businesses in the following months. By mid-1826 none of the Latin American companies was traded above par. By 1827, only 15 of the 624 companies formed in 1824-5 were traded above their paid-up price, while about 500 disappeared altogether. An attempt to raise again in Parliament the issue of the legal framework of business organization and to call for an inquiry or new legislation to replace the Bubble Act was curtailed by the Cabinet in 1826. The matter was excluded from the public agenda until the mid-1830s, when it resurfaced, to remain on the agenda for the next 20 years. The common law limitation on the formation of joint-stock companies remained in force, subject to minor reservations, until the introduction of general incorporation by Parliament in 1844. However, this part of the story is beyond the scope of the present article.

Ideological considerations played only a minor role in the process that led to the repeal of the Bubble Act. The discourse on the issue was not initiated by the emergence of a new economic policy, but rather by the independence of Spain's Latin American colonies, and the ensuing stock market boom. Classical political economics did not provide its disciples with any clear guidelines regarding the function of joint-stock companies in the economy. Adam Smith was ambivalent and Ricardo, a stockbroker himself, did not touch on the issue at all.[75] The theoretically confused political economists in Parliament left the arena relatively open to manipulations by the representatives of interest groups.

The debates over the massive incorporation phenomenon and the repeal

[74] Actually only its second part, which dealt with joint-stock undertakings in general, was repealed on that occasion. Its first phase, clauses 1 to 17, which regulated the incorporation of the London Assurance and Royal Exchange Assurance, was amended in 1824 as the marine insurance monopoly was abrogated.

[75] Smith, *Wealth of nations*, pp. 682-716.

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of the Bubble Act demonstrate the limits of applying a *laissez-faire* paradigm to the 1820s. The term itself was not used in the contemporary debate and the concept was not employed coherently. Some held that government should not interfere in the economy any further, while others thought that future interference was required to abrogate past interference.

In the context of business organization, the original, or natural, state of things was debatable. Should business organizations be viewed as state-made creatures, interfering with an atomistic and individualistic market, or as the natural and voluntary outgrowth of civic society? Should general incorporation be introduced with the repeal of the Bubble Act? Should further incorporation from Parliament be granted? Does the implementation of economic *laissez-faire* also involve interference with traditional common-law, rather than legislative, prohibitions on free association? How could one not consider limitation of shareholders' liability as interference in free market transactions? The fact that all these questions were barely addressed in 1825 strengthens the argument that the concept of *laissez-faire* was not sufficiently defined by that date to structure the public discourse. It was not defined even in the less controversial market economy sense, more closely related to the theories of political economy, not to say in the more perplexing social and administrative sense. *Laissez-faire* served at times as a goal and at other times as a means. It was not the sole factor that shaped policy even in simpler cases such as free trade and tariffs, and only one of many factors in more complex fields such as poor law, factory and health legislation, and, in our case, business organization.

Liverpool's administration of 1825 favoured minimum interference in the status quo, and did not act positively or decisively to diminish existing state intervention in the economy or to strengthen individual autonomy.[76] When reform in company law did take place in the 1840s and 1850s, it was not along economic *laissez-faire* lines, but instead was relatively interventionist in character, and part of a wider legislative package which also included railway and banking regulation.[77]

The function of interest groups and of the private interests of MPs in the decision-making process in Parliament in our context should not be underestimated. It is true that interests can usually be proven when searched for meticulously and that they do not always provide the key to politicians' opinions, but saying this does not make redundant the discussion of their actual role in a specific context. The question is why and by what mechanism interests rose to dominance at a specific point in time and in relation to specific issues.

The major role of interests in the process that led to the repeal of the Bubble Act would not come as a surprise to modern theorists of economic regulation. Yet these theorists might find their models insufficient when trying to apply them to the repeal of the Bubble Act and its consequences.

[76] This segment of my argument is in line with the early work of Hilton, but as we turn to the position of interest groups I diverge: see Hilton, *Corn, cash, commerce*, pp. 303-14.

[77] Harris, 'Industrialization without free incorporation', pp. 309-25.

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The models of the early 1970s were quite simple: a monolithic legislature, several distinct interest groups of various sizes, and a few well-defined modes of regulation. These early models hardly explain the complex events or the final legislative outcome of 1825: neither the government nor Parliament was monolithic; the judiciary had its say; figures such as Moore and Grenfell, or Eldon for that matter, played several roles simultaneously; interest groups had overlapping as well as conflicting interests; the legal implications of the Bubble Act were debated; and its repeal could have no fewer regulatory effects than its reinforcement.

Since the mid-1970s the theory of regulation has been developed further, by integrating executive agencies, multiple interest groups, and other factors, to compensate for some early over-simplifications.[78] The recent developments in economic theory can enlighten the historian examining the present case, yet they fall short of accounting for all the factors and explaining the final outcome in complex circumstances, such as those which evolved in 1825. In its current state, economic theory particularly fails to illuminate the role of the judiciary, which was able to reinstate the prohibition on free incorporation, the outcome of the clash between interest groups notwithstanding.[79]

The judiciary and the legal culture in general, considerably influenced the final outcome. Lord Eldon, a key figure in this period, was the typical product of a social and educational system, and in turn, of a legal ethos, that stressed the importance of legal precedents, ancient legal conceptions, formalistic legal thinking, and an autonomous legal realm. His objection to the suggested regulatory transformation was not motivated by interest-group pressures, nor by an articulated economic outlook, but rather by his legal ideals. The conflict between him and the more conservative elements in the judiciary and the bar on the one hand, and some of the more business-oriented lawyers in the City and in Parliament and some judges of the common-law courts, on the other, demonstrates well that legal doctrines, including regulatory doctrines, can be interpreted and implemented differently and sometimes even in contradictory ways by jurists of different outlooks.[80] This case demonstrates, I believe, the

[78] See above n. 7.

[79] Another shortcoming of the theory is its inability to predict the timing of, and explain fully, the move from one equilibrium among interest groups to another. Olson, *Rise and decline of nations*, explains a move from one regulatory system to the next mainly by exogenous shocks, which reshuffle the array of interest groups. This thesis is partly supported by the present case, but internal changes in the well-established interest groups (East India Company, Bank of England, and the marine insurance companies), growing ideological hostility towards their monopolistic privileges, and complex interactions between them and the newcomers, might possibly also be integrated into the explanation. However, this course will not be elaborated in this article.

[80] Landes and Posner made the first attempt at integrating the judiciary into the theory of regulation: see 'Independent judiciary', p. 875. See also Anderson, Shughart, and Tollison, 'Legislative wealth transfers', p. 215; Salzberger, 'Doctrine of separation of powers', p. 349. Landes and Posner argue that the judiciary, unlike the legislature, is independent of interest group politics. Thus, the independent judiciary provides a long-term enforcement mechanism for contracts made between past legislatures and effective interest groups. By this it raises the market value of regulatory commodities. The Landes-Posner model might explain the motivation of the legislature or of interest groups, but why should a given judiciary prefer to enforce past regulatory regimes rather than newly formed ones? In the present case, a prediction that Eldon was enforcing the contract made in 1720 between Parliament and the, by his time, obsolete South Sea Company seems anachronistic and inexplicable.

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indeterminacy of the legal doctrine of incorporation in 1825, a doctrine that was subject to conflicting interpretations both before and after the repeal of the Bubble Act.

A positive theory of regulation which does not account for jurisprudential, doctrinal, and institutional legal factors will not be able to explain the road to the repeal of the Bubble Act or the replacement of statutory regulation by common-law prohibition in the aftermath of the repeal. This article does not aim to provide a clear-cut, single-factor, explanation for the repeal of the Bubble Act, but rather to advance a multi-dimensional and interdisciplinary approach to this historical problem.

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